

**New Jersey Public Employees' Occupational Safety and Health Act**  
**N.J.S.A. 34:6A-25 et seq.**

**34:6A-25. Short title**

This act shall be known and may be cited as the "New Jersey Public Employees' Occupational Safety and Health Act."

**34:6A-26. Legislative findings**

The Legislature finds that the safety and health of public employees in the workplace is of primary public concern. Personal injuries and illnesses arising out of work situations result not only in wage loss and increased medical expenses for employees, but also in decreased productivity and increased workers' compensation expenses for employers. The Legislature therefore declares: a. that it is the policy of this State to ensure that all public employees be provided with safe and healthful work environments free from recognized hazards, b. that it is the responsibility of the State to promulgate standards for the protection of the health and safety of its public workforce, and c. that it is in the public interest for public employers and public employees to join in a cooperative effort to enforce these standards.

**34:6A-27. Definition**

As used in this act:

- a. "Advisory board" means the Public Employees Occupational Safety and Health Advisory Board created by section 4 of this act.
- b. "Commissioner" means the Commissioner of Labor or his designee.
- c. "Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of: (1) the State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency; or (2) any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.
- d. "Employee" means any public employee, any person holding a position by appointment or employment in the service of an "employer" as that term is used in this act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the "New Jersey Employer-Employee Relations Act," P.L.1941, c. 100, C. 34:13A-1 et seq. shall be excluded from the coverage of this act;
- e. "Employee representative" means a "representative" as that term is defined in the "New Jersey Employer-Employee Relations Act," P.L.1941, c. 100, C. 34:13A-1 et seq.;
- f. "Review commission" means the Occupational Safety and Health Review Commission created by section 18 of this act;
- g. "Secretary" means the Secretary of the United States Department of Labor;
- h. "Workplace" means a place where public employees are assigned to work.

**34:6A-28. Advisory board**

There is created a Public Employees' Occupational Safety and Health Advisory Board to assist the commissioner in establishing standards for the occupational safety and health of public employees. The board shall make itself available to receive information regarding matters of concern to public employees in the areas of occupational safety and health. The advisory board, under the chairmanship of the commissioner, shall consist of the Commissioner of Education, the Commissioner of Health, the Commissioner of Environmental Protection, the Commissioner of Community Affairs, the State Treasurer, or their designees, and 18 members to be appointed by the Governor, as follows: one member representing the fire service, one member representing municipalities, one member representing municipal employees, one member representing county government, one member representing employees of county government, one member representing State employees, one member representing public health care facilities, one member representing employees of public health care facilities, one member representing correctional institutions, one member representing employees of correctional institutions, one member representing law enforcement employees, one member representing

local school boards, one member representing local school board employees, one member representing Rutgers, The State University, one member representing employees in institutions of higher education, and three members representing the public. The members selected by the Governor shall be selected on the basis of their experience and competence in the field of occupational safety and health. No more than nine members appointed by the Governor shall be from the same political party. Each member shall serve for a term of three years and until his successor is appointed and qualified. A vacancy shall be filled by appointment by the Governor to the unexpired term. The members of the advisory board shall serve without compensation but shall be entitled to reimbursement for their actual traveling expenses and other expenses incurred in the performance of their duties.

#### **34:6A-29. Plan for health and safety standards**

The commissioner shall, in consultation with the Commissioner of Health, the Commissioner of Community Affairs and the advisory board, promulgate a plan for the development and enforcement of occupational safety and health standards with respect to public employers and public employees, in accordance with section 18(c) of the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.). The Department of Labor shall be the sole agency responsible for administering and enforcing this plan throughout the State. The plan shall:

- a. Provide for the development and enforcement of safety and health standards;
- b. Provide for the right of entry and inspection in all workplaces by the commissioner;
- c. Provide for the right of entry and inspection in all workplaces by the Commissioner of Health;
- d. Prohibit advance notice of inspections;
- e. Contain satisfactory assurances that the Department of Labor and the Department of Health have the legal authority and qualified personnel necessary to carry out their responsibilities under this act;
- f. Give satisfactory assurances that the State will devote adequate funds to the administration and enforcement of the standards;
- g. Contain satisfactory assurances that the State will, to the extent permitted by law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the corresponding provisions of the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.);
- h. Provide that the Department of Labor shall make such reports to the secretary in the form and containing the information that the secretary from time to time requires; and
- i. Provide for such cooperation with the Department of Community Affairs in implementing the plan as is consistent with the provisions of P.L.1983, c.516 (C.34:6A-25 et seq.) and the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.).

#### **34:6A-30. Adoption of standards**

- a. The commissioner shall provide for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the secretary under the authority of the "Occupational Safety and Health Act of 1970." Whenever the United States Secretary of Labor adopts a standard pursuant to the provisions of the "Occupational Safety and Health Act of 1970" (29 U.S.C. s.651 et seq.), the commissioner shall publish that federal standard in the New Jersey Register in accordance with the provisions of section 5 of P.L.1968, c.410 (C.52:14B-5) and, notwithstanding the provisions of section 4 of P.L.1968, c.410 (C.52:14B-4), that federal standard shall be deemed to be duly adopted as a State regulation upon its publication by the commissioner.
- b. The commissioner shall not adopt any standard within the scope of the State uniform construction code adopted pursuant to P.L.1975, c.217 (C.52:27D-119 et seq.) or the uniform fire safety code adopted pursuant to P.L.1983, c.383 (C.52:27D-192 et al.), unless the standard is a standard adopted pursuant to subsection a. of this section. If the Commissioner of Community Affairs determines that a standard for building or structural safety adopted by the commissioner pursuant to subsection a. of this section is more stringent than the applicable standards adopted into code pursuant to the State uniform construction code or the uniform fire safety code, he shall adopt a rule incorporating the more stringent standard into the relevant code. If the Commissioner of Community Affairs determines that there is a difference between a provision of any new or existing standard adopted pursuant to subsection a. of this section and a provision of the uniform construction code or the uniform fire safety code, and he

determines that the provision of the code is as effective as the provision of the standard, he shall prepare and submit to the commissioner an application for submission to the Secretary of Labor seeking (1) the approval of that provision of the uniform construction code or the uniform fire safety code as being as effective as the provision of the standard and (2) the approval of the incorporation of the code provision into the State plan.

- c. Where no federal standards are applicable or where standards more stringent than the federal standards are deemed advisable, the commissioner shall, in consultation with the Commissioner of Health and the Commissioner of Community Affairs and, with the advice of the advisory board, provide for the development of State standards as may be necessary in special circumstances.
- d. The commissioner and the Commissioner of Health, or their designees, shall meet with the advisory board at each scheduled meeting for these purposes. The advisory board shall meet not less than four times each year.
- e. The Commissioner of Health shall not adopt standards or issue orders to comply in any area but shall be charged with inspection, investigation and related activities in the following areas:
  - 1) Occupational health and environmental control;
  - 2) Medical and first aid;
  - 3) Toxic and hazardous substances;
  - 4) Respiratory protective equipment; and
  - 5) Sanitation

The Commissioner of Labor shall be charged with inspection, investigation and related activities for all other regulated areas and with adopting of standards and issuing orders to comply in all regulated areas.

#### **34:6A-31. Promotion of goals of the act**

The commissioner, in consultation with the Commissioner of Health and the Commissioner of Community Affairs and with the advice of the advisory board, shall:

- a. Provide for a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards arising from undesirable, inappropriate, or unnecessarily hazardous or unhealthful working conditions at the workplace and of stimulating employers and employees to institute new, and to perfect existing, programs for providing safe and healthful working conditions;
- b. Provide for the publication and dissemination to employers, employees, and labor organizations, and the posting, where appropriate, by employers of informational, educational and training materials calculated to aid and assist in achieving the objectives of this act;
- c. Provide for the establishment of new, and for the perfection and expansion of existing, programs for occupational safety and health education for employers and employees and institute methods and procedures for the establishment of a program for voluntary compliance by employers and employees with the standards established pursuant to this act.

#### **34:6A-32. Promulgation of regulations.**

The commissioner shall, in consultation with the Commissioner of Health and Senior Services and the Commissioner of Community Affairs and with the advice of the advisory board, promulgate all regulations which he deems necessary for the proper administration and enforcement of this act. A variance may be granted if the commissioner determines that the applicant is in compliance with the requirements for a permanent variance as set forth in subsection c. of section 15 of this act. The variance shall not be deemed to be a variation approved pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et al.) or any other building or fire safety standard or code.

Space leased by a public employer shall be subject to current health or safety rules and regulations. Any deficiency, including a deficiency resulting either from occupant use or deferred maintenance by the lessor, shall be subject to correction in accordance with the governing rules and regulations at the time that the deficiency is cited by the commissioner or the Commissioner of Health and Senior Services. However, a lease of any duration may not be entered into unless the leased property is in conformance with such rules and regulations as are in effect at the time the lease is executed.

No fire company, first aid or rescue squad, whether paid, part-paid, or volunteer, shall be required to pay to the

Department of Labor or the Department of Health and Senior Services any registration or inspection fee imposed by rule or regulation with regard to the filling of air cylinders for respiratory equipment used by the fire company, first aid or rescue squad.

### **34:6A-33. Responsibilities of employers**

Every employer shall:

- a. Provide each of his employees with employment and a place of employment which are free from recognized hazards which may cause serious injury, physical harm or death to his employees; and
- b. Comply with occupational safety and health standards promulgated under this act.

### **34:6A-34. Duty of compliance by public employees**

Every public employee shall comply with occupational safety and health standards and all regulations promulgated under this act which are applicable to his own actions and conduct.

### **34:6A-35. Inspections; compliance**

- a. The commissioner and the Commissioner of Health shall be charged with making inspections in their jurisdictional areas as specified in section 6 of P.L.1983, c.516 (C.34:6A-30). The commissioner may call on the professional staff of other departments whenever he deems their assistance necessary.
- b. Each commissioner shall have the right of immediate entry at reasonable hours and without advance notice into any workplace to conduct such investigations as he may deem necessary. Each commissioner shall maintain records of the results of any investigation under his jurisdiction, which, after a final agency or judicial action is taken regarding any order to comply which results from the inspection, shall be made available to the public upon request, except that any information which identifies an individual employee shall be confidential. The authority of each commissioner to inspect any premises for purposes of investigating an alleged violation under his jurisdiction shall not be limited to the alleged violation but shall extend to any other area of the premises in which he has reason to believe that a violation of any provision of this act under his jurisdiction exists. The Commissioner of Health shall make his inspection records available to the commissioner for purposes of enforcement.
- c. If either commissioner concludes that conditions or practices in violation of any provision of this act under his jurisdiction exist in any workplace, he shall inform the affected employees and employers of the danger.
- d. Each order to comply issued under this section, or a copy or copies thereof, shall be prominently posted at or near each place where a violation referred to in the order to comply occurred and the commissioner shall make the order available to employee representatives, affected employees and, upon request, to the public.
- e. Any employee who accompanies either commissioner on an inspection shall receive payment of normal wages for the time spent during the inspection.
- f. Where there is no authorized employee representative, each commissioner or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.
- g. Any person who gives advance notice of any inspection to be conducted under this act, without authority from the commissioner, the Commissioner of Health or their designees, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

### **34:6A-36. Notice of safety violation**

- a. Any employee, group of employees or employee representative who believes that a violation of a safety standard exists, or that an imminent danger exists, may request an inspection by giving notice to the commissioner of the violation or danger. The notice and request shall be in writing, shall set forth the grounds for the notice and shall be signed by the employee, a group of employees or an employee representative. Upon the request of the person giving the notice, his name or the name of any employee representative giving the notice shall be withheld. The commissioner shall conduct an appropriate inspection at the earliest time possible.

The commissioner shall so interpret and administer this section so as to encourage any employee, group of employees or employee representative who believes that a violation of a safety standard exists, or that an imminent danger exists, to report that violation or danger in the first instance to the employer's safety officer.

- b. A representative of the employer, the employee or employees giving the notice and an employee representative shall be given the opportunity to accompany the commissioner during an inspection for the purpose of aiding in such inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees concerning matters of safety in the workplace.
- c. Any employee who accompanies the commissioner on an inspection shall receive payment of normal wages for the time spent during the inspection.
- d. The information obtained by the commissioner under this section shall be obtained with a minimum burden upon the employer.

#### **34:6A-38. Notice of health standard violation**

- a. Any employee, group of employees or employee representative who believes that a violation of a health standard exists, or that an imminent danger exists, may request an inspection by giving notice to the Commissioner of Health of the violation or danger. The notice and request shall be in writing, shall set forth the grounds for the notice and shall be signed by the employee, a group of employees or employee representative. Upon the request of the person giving the notice, his name or the name of any employee representative giving the notice shall be withheld. The Commissioner of Health shall conduct an appropriate inspection at the earliest time possible. In any case of a possible imminent hazard, the commissioner may request the assistance of other State agencies having appropriate expertise.

The Commissioner of Health shall so interpret and administer this section so as to encourage any employee, group of employees or employee representative who believes that a violation of a health standard exists, or that an imminent danger exists, to report that violation or danger in the first instance to the employer's safety officer.

- b. A representative of the employer, an employee giving the notice and an employee representative shall be given the opportunity to accompany the Commissioner of Health during an inspection for the purpose of aiding in such inspection. Where there is no authorized employee representative, the Commissioner of Health shall consult with a reasonable number of employees concerning matters of health in the workplace.
- c. Any employee who accompanies the Commissioner of Health or the Commissioner of Community Affairs on an inspection shall receive payment of normal wages for the time spent during the inspection.
- d. The information obtained by the Commissioner of Health under this section shall be obtained with a minimum burden upon the employer.

#### **34:6A-39. Variances**

- a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this act. A temporary order shall be granted only if the employer files an application with the commissioner which meets the requirements of this section and establishes in a hearing conducted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and P.L.1978, c.67 (C.52:14F-1 et seq.) that:
  - 1) he is unable to comply with the standard by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to comply with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
  - 2) he is taking all available steps to safeguard employees against the hazards covered by the standard; and
  - 3) he has an effective program for complying with the standard as quickly as practicable.

Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer shall adopt and use while the order is in effect and the order shall state in detail what the employer's program shall be for complying with the standard.

A temporary order may be granted only if notice to the employees is given; provided, however, that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. An employee representative or, where one does not exist, the affected employees, may appear at the hearing, with or without

counsel, and submit testimony concerning the employer's application for the variance. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed no more than twice so long as the requirements of this section are met and if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect longer than 180 days.

b. An application for temporary variance shall contain:

- 1) a specification of the standard or portion thereof from which the employer seeks a variance;
- 2) a representation by the employer, supported by representations from qualified persons who have firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;
- 3) a statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;
- 4) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to comply with the standard;
- 5) a certification that he has informed his employees of the application by giving a copy thereof to their employee representative where one exists, and posting a statement at the place where notices to employees are normally posted, giving a summary of the application and specifying where a copy may be examined. A description of the notification procedure used by the employer shall be contained in the certification. The information to the employees shall also inform them of their right to appear and be heard, as set forth in subsection a. of this section, at the hearing on the variance application; and
- 6) a statement, if appropriate, that such a variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

c. Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this act. An employee representative or, where one does not exist, the affected employees, shall be given notice of each such application and shall be afforded an opportunity to participate in a hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1 et seq.) and P.L.1978, c.67 (C.52:14F-1 et seq.) on the merits of the application, with or without counsel, and to submit testimony. The commissioner shall issue such rule or order if he determines on the record, after an opportunity for an inspection, where appropriate, that the proponent of the variance has demonstrated, by a preponderance of the evidence, that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide workplaces which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer shall maintain and the practices, means, methods, operations and processes which he shall adopt and utilize to the extent they differ from any standard adopted pursuant to this act. Such a rule or order may be modified or revoked upon application by an employer, any employee, group of employees or employee representative, or by the commissioner on his own motion, in the manner prescribed for its issuance under this section at any time after six months from its issuance.

d. In determining whether to grant a variance from a health standard, the commissioner shall consult with the Commissioner of Health.

#### **34:6A-40. Employer records; reports**

In accordance with the regulations which shall be adopted by the commissioner, each employer shall make, keep, preserve and make available the following records to the commissioner and the Commissioner of Health:

- a. Records regarding the employer's activities relating to this act as the commissioner deems necessary or appropriate for the enforcement of this act or for developing information regarding the causes and prevention of occupational accidents and illness.
- b. Records regarding work-related deaths, injuries and illnesses other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job.
- c. Records regarding employee exposure to potentially toxic materials or other harmful physical agents which the regulations require to be monitored or measured. The regulations shall provide employees or their representatives with an opportunity to observe the monitoring or measurement and access to the records of the monitoring or measurement. Each employee or former employee shall be informed of and have access to all records which will indicate his own exposure to toxic materials or harmful physical agents and the properties, characteristics and effects

thereof. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials of harmful physical agents in concentrations or at levels which exceed those prescribed by any safety and health standard promulgated under this act, and shall inform any employee who is being exposed of the corrective action being taken and the time limit for compliance pursuant to subsection a. of section 17 of this act.

Each employer shall, in accordance with regulations which shall be adopted by the commissioner, file with the commissioner periodic reports based on the records kept pursuant to this section. The commissioner shall develop and maintain an effective program of collection, compilation, analysis and reporting to the public of statistics on work-related deaths, injuries and illnesses other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job, except that any information which identifies an individual employee shall be confidential. The commissioner shall promote, encourage or directly engage in programs of studies, information and communication concerning occupational safety and health statistics.

#### **34:6A-41. Compliance orders; violations; penalties**

- a. If the commissioner determines that an employer has violated a provision of this act, or a safety standard or regulation promulgated under this act, if the commissioner receives a certification from the Commissioner of Health that an employer violation has been determined to exist within the Commissioner of Health's jurisdiction, or if the commissioner receives a report from the Department of Labor or the Department of Health, prepared as a result of the investigation of the death or serious injury of one or more firefighters, which indicates the existence of a violation of this act or of a safety standard promulgated under this act, he shall with reasonable promptness, and in no case more than six months after his determination or the receipt of the certificate or report, issue to the employer a written order to comply which shall describe the nature of the violation, including a reference to the provision of the section, standard, regulation or order alleged to have been violated, the sanction therefor, where appropriate, and shall fix a reasonable time for compliance.
- b. If the commissioner issues to an employer an order to comply, the employer shall post such order or a copy thereof at or near each location of the violation cited in the order so that it is clearly visible to affected employees. The commissioner shall make such order available to employee representatives and affected employees, and shall make the order available to the public upon request.
- c. If no notice of intent to contest any provision of the order is filed with the commissioner by an employer, employee or employee representative within fifteen working days of the issuance of an order to comply, the order shall be deemed final and not subject to review by any court or agency. If, within fifteen working days of the issuance of an order to comply, any employer, employee or employee representative files a notice with the commissioner of intent to contest any provision of the order, the commissioner shall immediately advise the Occupational Safety and Health Review Commission of the notification, and the commission shall afford an opportunity for a hearing. The review commission shall thereafter issue an order, based on a finding of fact, affirming, modifying, or vacating the commissioner's order to comply or the proposed penalty, or directing other appropriate relief, and the order shall become final 45 days after its issuance. The rules of procedure prescribed by the review commission shall provide affected employers, employees, or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.
- d. If the time for compliance with an order of the commissioner issued pursuant to this section elapses, and the employer has not made a good faith effort to comply, the commissioner shall impose a civil administrative penalty of up to \$7,000 per day for each violation of a provision of P.L. 1983, c.516 (C.34:6A-25 et seq.), or of a standard or regulation promulgated under that act, or of an order to comply. Any employer who willfully or repeatedly violates the requirements of this section or any standard, rule, order or regulation promulgated under that act shall be assessed a civil administrative penalty of up to \$70,000 for each violation. Penalties imposed under this section may be recovered with costs in a civil action commenced by the commissioner by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) in the Superior Court or a municipal court, either of which shall have jurisdiction to enforce "the penalty enforcement law" in connection with this act. If the violation is of a continuing nature, each day during which it continues after the date given for compliance in accordance with the order of the commissioner shall constitute an additional separate and distinct offense.
- e. The commissioner is authorized to compromise and settle any claim for a penalty under this section in such amount as, in the discretion of the commissioner, may appear appropriate and equitable under all of the circumstances. In any claim involving investigations conducted by the Department of Health, the commissioner shall make the determination as to the compromise or settlement of the claim in consultation with the Commissioner of Health.

#### **34:6A-42. Occupational Safety and Health Review Commission**

- a. There is established an Occupational Safety and Health Review Commission within the Department of Labor to hear appeals regarding orders to comply and penalties issued under this act. The commission shall consist of three members appointed by the Governor from among persons who by reason of training, education or experience are qualified to carry out the functions of the commission. The Governor shall designate one of the members of the commission to serve as chairman.
- b. Members of the review commission shall serve terms of four years and until their successors are appointed. The salaries, compensation and wages of the members of the commission shall be established by the commissioner. The Department of Labor shall provide the review commission with the support staff necessary for the review commission to perform its duties. The members and the support staff shall be reimbursed for necessary expenses incurred in the performance of their duties.
- c. The review commission shall meet as often as is necessary to hear and rule on appeals regarding orders to comply and penalties issued under this act. The review commission shall adopt rules with respect to the procedural aspects of its hearings.
- d. An employee or employee representative may participate as a party to any proceeding regarding the employees' employer before the review commission.
- e. The review commission shall hear and make a determination upon any proceeding instituted before it, and shall make a report of the determination which shall constitute its final disposition of the proceedings. The report shall become the final order of the commission 45 days after the issuance of the report.
- f. In the conduct of hearings the review commission may subpoena and examine witnesses, require the production of evidence, administer oaths and take testimony and depositions.
- g. After hearing an appeal the review commission may sustain, modify or dismiss a citation or penalty.

#### **34:6A-43. Appeals from decision of review commission**

Any appeal from a decision of the review commission shall be to the Appellate Division of the Superior Court.

#### **34:6A-44. Restraining orders**

The Attorney General, at the request of and on behalf of the commissioner, may bring an action in the Superior Court to restrain any conditions or practices in any workplace which the commissioner determines, in accordance with section 17 of this act, are such that a danger exists which could reasonably be expected to cause death or serious physical harm. Any order issued under this act may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists.

#### **34:6A-45. Retaliatory discrimination prohibited**

- a. No person shall discharge, or otherwise discipline, or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this section or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or others of any right afforded by this section.
- b. Any employee who believes that he has been discharged, disciplined or otherwise discriminated against by any person in violation of this section may, within 180 days after the employee first has knowledge such violation did occur, file a complaint with the commissioner alleging that discrimination. Upon receipt of the complaint, the commissioner shall cause an investigation to be made as he deems appropriate. If, upon that investigation, the commissioner or his designee determines that the provisions of this section have been violated, he shall, not more than 90 days after the receipt of the complaint, notify the employer and the employee of his determination, which shall include an order for all appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay and reasonable legal costs. The notice shall become the commissioner's final determination, unless, within 15 days of receipt of the notice, the employer or employee requests a hearing before the commissioner or his designee, in which case the commissioner shall issue his final determination not more than 45 days after the hearing report is issued.
- c. Nothing in this section shall be deemed to diminish the rights of any employee under any law, rule or regulation or under any collective negotiation agreement.



- d. Any waiver by an employee or applicant for employment of the benefits or requirements of this act shall be against public policy and be void and any employer's request or requirement that an employee waive any rights under this act as a condition of employment or continued employment shall constitute an act of discrimination.

#### **34:6A-47. Advisors to commission of capital budgeting and planning on workplace safety and health**

The Commissioner of Labor, the Commissioner of Community Affairs and the Commissioner of Health shall serve in an advisory capacity to the New Jersey Commission of Capital Budgeting and Planning on matters of workplace safety and health, to ensure that new construction meets the standards established by this act.

#### **34:6A-48. Act inapplicable to right to strike**

Nothing in this act shall be deemed to give public employees the right to strike over occupational safety and health issues.

#### **34:6A-49. Uniform codes not superseded, permits required**

Except as provided in section 6 of P.L.1983, c.516 (C.34:6A-30), nothing in this act shall be deemed to conflict with or supersede any provision of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the code promulgated thereunder or to affect or limit the powers, duties, authorities and responsibilities of the Commissioner of Community Affairs or any enforcing agency thereunder. Except as provided in section 6 of P.L.1983, c.516 (C.34:6A-30), nothing in this act shall be deemed to conflict with or supersede any provision of the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et al.), or the code promulgated thereunder, nor affect or limit the powers, duties, authorities and responsibilities of the Commissioner of Community Affairs or any enforcing agency thereunder.

Whenever an action taken to comply with the provisions of this act makes it necessary for a property owner or employer to obtain a permit pursuant to the State uniform construction code, the owner or employer shall obtain the permit from the enforcing agency having jurisdiction. The commissioner shall inform any owner or employer who is required to take an action to be in compliance that it is the responsibility of the owner or employer to contact the agency having jurisdiction to determine whether a permit is required and to obtain any required permit.

#### **34:6A-50. Annual report**

- a. Not later than December 31 of the first full calendar year following the effective date of this 1995 amendatory and supplementary act and not later than December 31 of each subsequent year, the commissioner shall, in consultation with the Commissioners of Health and Community Affairs, issue to the Governor and the Legislature an annual report on the effects of this 1995 amendatory and supplementary act on the protections provided, State plan approval, and costs and benefits to public employees and employers.
- b. The report issued pursuant to subsection a. of this section on the fifth full calendar year following the effective date of this 1995 amendatory and supplementary act shall include any recommendations the commissioner deems appropriate for amendments to, or the repeal of, this 1995 amendatory and supplementary act, provided that the recommendations shall include an implementation plan which includes measures to offset any loss of federal funding caused by any recommended amendments or repeal.